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4 Attorney for Defendants
5 Larry Nolan, Garry Birch, and Jason Sage

6
7 UNITED STATES DISTRICT COURT

8 NORTHERN DISTRICT OF CALIFORNIA

9 SAN FRANCISCO DIVISION

10 CORNEALIUS LOPES,

11 Plaintiff,

12 Vs.

13 FREEMONT FREEWHEELERS, et al.,

14 Defendants.

15 Case No.: C 07-6213 PJH

16 DEFENDANT GARRY BIRCH AND
JASON SAGE'S MOTION TO DISMISS
PURSUANT TO RULE 12(b)(6)

17 Date: June 25, 2008

Time: 9:00am

Dept: Courtroom 3, 17th Floor

Judge: Hon. Phyllis J. Hamilton

18 TO ALL PARTIES AND TO THEIR ATTORNEY(S) OF RECORD:

19 PLEASE TAKE NOTICE THAT on June 25, 2008 at 9:00 a.m. before Judge
20 Phyllis J. Hamilton, located at Courtroom 3, 17th floor at 450 Golden Gate Avenue, San
21 Francisco, CA 94102, or as soon thereafter as may be heard, Defendant Garry Birch and
22 Jason Sage will move this Court to dismiss this action against him under Federal Rules of
23 Civil Procedure, Rule 12(b)(6) on the following grounds:
24

25 1) Defendant Jason Sage moves to dismiss this action on the grounds that res
26 judicata bars this complaint;
27

1 2) Defendants Jason Sage and Garry Birch move to dismiss the complaint since
2 it is barred by the statutes of limitation;
3 3) Defendants Jason Sage and Garry Birch move to dismiss this action because
4 the complaint fails to state a claim upon which relief may be granted.

5 This motion is based on this notice of motion, the memorandum of points and
6 authorities accompanying this motion, the pleadings in this action, the request for judicial
7 notice of plaintiff's prior criminal prosecution (Alameda Superior Court, Case No.
8 209109-1) and prior suit against Joseph Dale Wren, et al., (Federal District Court,
9 Northern District of California, Case No., C 06-03705 CRB), and prior complaint in
10 Lopes v. Fremont Freewheelers et. al., (Alameda Superior Court, Case No.
11 HG06260161), and such other and further evidence as may be produced at the time of the
12 hearing.

13 Dated: May 20, 2008

14 By: /s/ Mark P. Meuser

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